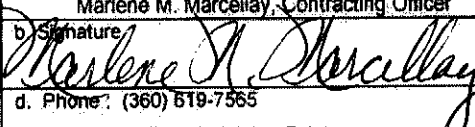
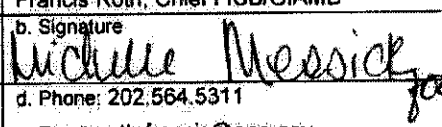


<b>FHWA AGENCY AGREEMENT</b> Project: <u>EPA Avery Landing Removal Action</u> Project ID PFH 50(9)		FHWA Agreement No: <u>DTFH70-12-X-30003</u> Other Agency's Agreement No: _____	
(check one) <input checked="" type="checkbox"/> FHWA is the Requesting Agency <input type="checkbox"/> FHWA is the Servicing Agency		EFFECTIVE DATE: <u>See Block 8c. Signature Date</u> EXPIRATION DATE: <u>See Section III. Term of Agreement</u>	

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1. AGREEMENT. This Reimbursable Agreement (including the attached standard conditions) constitutes the entire agreement between the requesting agency and the servicing agency.			
2a. AUTHORITY OF REQUESTING AGENCY: (check all that apply)			
<input type="checkbox"/> 23. U.S.C. 204, Highways, Federal Lands Highway Program. (Applies when WFLHD is the requesting federal agency and Federal, state agencies, civil subdivisions of a state, or Tribes who will perform services relating to planning, research, engineering, construction of roads/bridges, or transit facilities within public lands/NPS/Indian reservations.) <input checked="" type="checkbox"/> 31 U.S.C. 1535, The Economy Act (Applies when 23 U.S.C. 308 does not apply. Authorizes one federal agency to secure items/services from another federal agency.)			
2b. AUTHORITY FOR SERVICING AGENCY:			
<input type="checkbox"/> 23. U.S.C. 308, Highways, Cooperation with Federal and State Agencies & Foreign Countries. (Applies when WFLHD is the Servicing Agency who will be performing engineering or other services to another Federal agency or to State/local government agencies.) <input type="checkbox"/> 23. U.S.C. 204, Highways, Federal Lands Highway Program. (Applies when WFLHD is the requesting federal agency and Federal, state agencies, civil subdivisions of a state, or Tribes who will perform services relating to planning, research, engineering, construction of roads/bridges, or transit facilities within public lands/NPS/Indian reservations.) <input type="checkbox"/> 31 U.S.C. 1535, The Economy Act (Applies when 23 U.S.C. 308 does not apply. Authorizes one federal agency to secure items/services from another federal agency.)			
3a. REQUESTING AGENCY ADDRESS  Federal Highway Administration Western Federal Lands Highway Division 610 East Fifth Street Vancouver WA 98661-3801		3b. SERVICING AGENCY ADDRESS  U.S. Environmental Protection Agency 1200 Pennsylvania Avenue NW (3903R) Washington, D.C. 20460.	
4a. FHWA Accounting & Appropriation Data:  1517160500009 532.CN.F15E.16 1716000000 25304 \$3,000,000		4b. SERVICING AGENCY Accounting & Appropriation Data:	
5. FUND AMOUNT  Amount Obligated by this Action: <u>\$3,000,000.00</u>		6. PAYMENT AND BILLING The other party to this agreement is a: (Check one) <input checked="" type="checkbox"/> Federal Agency. Bill via Interagency Payment and Collection (IPAC) to Requesting Agency's Location Code (see block 7a or 7b, as applicable.)  <input type="checkbox"/> Other than a Federal Agency. Agencies must submit an acceptable invoice in a format and frequency designated in Section IV.  See "Financial Administration" portion of this document for further details.	
7a. FHWA FINANCE CONTACT  1. 8-digit Agency Location Code (ALC): <u>69-05-0001</u> 2. Dunns Number: <u>139-768-597</u> 3. TAS # <u>69-8083</u> 4. Finance Office Contact: <u>Julie Morris</u> 5. Finance Phone: <u>(360) 619-7983</u> 6. Finance FAX: <u>(360) 619-7945</u> 7. Finance email: <u>julie.morris@dot.gov</u>		7b. SERVICING AGENCY FINANCE CONTACT  1. 8-digit Agency Location Code (ALC): <u>68-01-0727</u> 2. DUNS #: <u>029-128-894</u> 3. Tax ID #: <u>52-0852685</u> 4. Finance Office Contact: <u>Jeffrey J. Marsala</u> 5. Finance Phone: <u>(513) 487-2056</u> 6. Finance Fax: <u>(513) 487-2545</u> 7. Finance email: <u>marsala.jeffrey@epa.gov</u>	
8a. FHWA APPROVAL (Name & Title - (type or print) Marlene M. Marcellay, Contracting Officer		9a. OTHER AGENCY APPROVAL (Name & Title - type or print) Francis Roth, Chief FISB/GIAMD	
b. Signature 		b. Signature 	
c. Date <u>4/25/12</u>		c. Date <u>4/23/12</u>	
d. Phone: (360) 619-7565 Email: <u>Marlene.Marcellay@dot.gov</u>		d. Phone: 202.564.5311 Email: <u>roth.francis@epa.gov</u>	

<b>FHWA AGENCY AGREEMENT</b>	
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(check one) <input checked="" type="checkbox"/> FHWA is the Requesting Agency <input type="checkbox"/> FHWA is the Servicing Agency	EFFECTIVE DATE: <u>See Block 8c, Signature Date</u> EXPIRATION DATE: <u>See Section III, Term of Agreement</u>

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## **EPA AVERY LANDING REMOVAL ACTION**

### **I. INTRODUCTION**

**State:** Idaho

**Project Name:** Avery Landing Removal Action Site, ID PFH 50(9)

**Project Location:** This Agreement addresses the cleanup of soil contaminated by oil and hazardous substances beneath the existing United States owned right of way on a section of Forest Highway 50 near Avery Landing, Idaho. The project includes excavation and disposal of contaminated soils and reconstruction of the highway.

**Purpose of this Agreement:** This Agreement documents the intent of the parties and clarifies the responsibilities of each for the funding, environmental analysis, and construction award and administration for the project.

**Authority:** This Agreement is entered into by the undersigned parties pursuant to the provisions of 31 U.S.C. 1535.

**Project Understanding:** EPA has identified contamination of soils and groundwater in an area along the St. Joe River in Idaho known as the Avery Landing Site. Soil and groundwater at the Site are known to contain petroleum hydrocarbons and hazardous substances, apparently associated with the site's historical use as a railroad roundhouse and maintenance facility. Petroleum hydrocarbons and hazardous substances at the Site are discharging to the St. Joe River in violation of the Clean Water Act. In addition, substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) have been found at the Site. A plume of light nonaqueous phase-liquid (LNAPL) extends from the northern edge of the Site toward the St. Joe River. Releases to the St. Joe River have occurred and are still occurring as a result of migration of petroleum hydrocarbons and hazardous substances. The petroleum constituents consist primarily of petroleum hydrocarbons in the diesel and Bunker oil range. The extent of contamination on United States property along Forest Highway 50 was not previously fully known. FHWA and EPA conducted or provided oversight of studies at the Site and determined that there were petroleum hydrocarbons on the property owned by the United States at the Site. FHWA has worked with EPA through the investigation process and is now requesting EPA to perform the clean-up of the United States property at the Site.

### **II. STATEMENT OF WORK**

Environmental Protection Agency = EPA  
Western Federal Lands Highway Division = FHWA

This statement of work covers the final packaging/advertising for contract award, administration during construction, and construction close out process for the ID PFH 50(9) Avery Landing project. FHWA has enclosed a Avery Landing - 2012 Removal Action Work Plan (ATTACHMENT 1) and a Avery Landing -FH 50 Road Reconstruction contract package (ATTACHMENT 2) (this package assumes EPA with their contractor will complete all excavation requirements for the cleanup, the FHWA package is only for rebuilding the excavated roadway) to be used as the work plan and road reconstruction requirements for the St Joe River road.

<b>FHWA AGENCY AGREEMENT</b>	
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(check one) <input checked="" type="checkbox"/> FHWA is the Requesting Agency <input type="checkbox"/> FHWA is the Servicing Agency	EFFECTIVE DATE: <u>See Block 8c, Signature Date</u> EXPIRATION DATE: <u>See Section III, Term of Agreement</u>

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### 1. Construction Contract Management (CM)

EPA will perform all construction contract management for the project, which includes:

- o Awarding contract for reconstruction of Highway 50
- o Processing and payment of contractor monthly pay requests
- o Ensuring all contract requirements are met, including:
  - On-Site testing and confirmation requirements that the contaminated soils have been removed and properly disposed of off-Site;
  - On-Site sampling and testing to assure roadway is constructed as specified in the contract package;
  - On-Site survey and inspection to assure roadway is constructed as specified in the contract package; and;
  - Wage rate compliance (Federal Davis Bacon Wage Rates).

### 2. EPA Submittals

EPA will prepare the following submittals for FHWA review:

- o Site-specific Sampling Plan (SSSP) or EPA equivalent; and
- o Removal Action Report documenting the removal operation, the actions taken, the resources committed, and the problems encountered.

### 3. Construction Engineering/Construction Inspection (CE/CI)

EPA will administer the construction of the project by providing the following:

- o Inspection of the construction;
- o Quality Assurance (QA) of the contractor's Quality Control (QC);
- o Collection and analysis of soil samples to confirm compliance with cleanup objectives;
- o Calculation or verification of quantities for bid items;
- o Required quality certifications for bid items;
- o Pre-construction meeting with meeting notes;
- o Final acceptance of construction; and
- o Final acceptance of cleanup.

### 4. Regulatory Compliance

All response actions at the Site shall be consistent with CERCLA, 42 U.S.C. § 9601 et seq. and the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300.

### 5. Administration

EPA may track employee time spent administering the project and related costs and invoice the time and/or costs as a reimbursable expense. Reimbursable time and costs may include, but are not limited to the following:

- o Managing the highway replacement contractor during construction activities
- o Plans and Specifications package reviews

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- o Recording of documents
- o Copies
- o Costs of required audits
- o Independent review of contract management
- o Cost for A/E consultants for the Design and or Construction management/Construction Engineering/Construction Inspection of the project

EPA is performing cleanup activities and oversight of cleanup activities for the entire Avery Landing Site, which is comprised of parcels of real property owned by Larry and Ethyl Bentcik, Potlatch Land and Lumber, LLC, the United States, and the State of Idaho. For the purpose of facilitating cleanup agreements, but in a non-binding manner, EPA apportioned cost among these parties by examining the relative costs for the major phases of the cleanup such as excavation, transportation, and disposal of materials, for each parcel. EPA also estimated the relative common (or shared) costs such as project planning, design, and management for the Site. EPA will track the direct costs for each parcel, as well as apportioned percentages of common costs for the Site. Indirect costs incurred by EPA and its contractor will also be included in the total payment amounts to be made by FHWA.

#### 6. FHWA Role

The role of the FHWA on the project is to:

- o Provide oversight and verification of the bid procedures;
- o Make site visits during construction to assure completeness and progress of construction;
- o Review and approve any plan changes effecting the final roadway configuration;
- o Conduct at least two removal action site verification reviews;
- o Provide inspection and construction management assistance for the re-construction of the highway and paving operations; and
- o Attend the final project walk-through.

7. **Completed Construction:** EPA will provide FHWA with a copy of the Removal Action Final Report which will include final acceptance to the highway replacement contractor, meeting notes from the final walk-through, photographs of the completed construction project, documentation of final quantities of materials removed, equipment hours, man hours, and direct expenses. EPA will also provide all sampling and testing results and final roadway as-built plans specified in the contract package.

#### 8. Cost Budget

The cost of the work for this Agreement is **Not to Exceed \$3,000,000** unless an amendment to the Agreement is made in writing and agreed to by both parties. FHWA will pay EPA for costs associated with the cleanup of contaminated materials from United States owned land, including direct and common costs and the associated indirect costs. EPA will submit all invoices to FHWA for these actual and reasonable costs incurred for reimbursement. **See Section IV, C. Reimbursable Payment.** Burden shall only apply to EPA labor costs only. All consultants, their subconsultants, contractors and their subcontractors, and any and all indirect costs shall be directly passed onto FHWA without overhead or burdening applied.

EPA Direct Labor, Including Overhead  
 120 days @ \$300/day      \$36,000

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EPA Direct Expenses and Travel	\$64,000
EPA Consultant	\$500,000
EPA IDIQ Contractor	\$400,000
EPA IDIQ Subcontractors	\$2,000,000
Total Not to Exceed =	\$3,000,000

### III. TERM OF AGREEMENT – Period of Performance

The terms and conditions of this agreement shall become effective with and upon execution by FHWA Contracting Officer and shall remain in effect for the Period of Performance through December 2, 2014, unless modified in writing by mutual agreement or terminated by either party upon thirty (30) days written notice. Full credit shall be allowed for each party's reimbursable costs and all non-cancelable obligations properly incurred up to the effective date of termination.

### IV. FINANCIAL ADMINISTRATION

Estimated Costs: FY 2012 \$3,000,000

- A. Total Agreement Amount: See block #5, cover page, for funds obligated by this agreement. Funding Citations: See blocks 4a & 4b, of cover page.
  - B. IPAC: In accordance with the Debt Collection Improvement Act of 1996, all payments from FHWA to EPA must be billed via Intra-Governmental Payment and Collections (IPAC). The Agency Location Code (ALC) for FHWA is 69-05-0001. For IPAC payment by FHWA, EPA will submit billings to FHWA with supporting documentation as costs are incurred by EPA, and one final and complete billing marked **Final Invoice** for reimbursement of all eligible costs incurred not later than 180 days after satisfactory completion of the work pursuant to the provisions of Title 23 CFR 645.117.
  - C. Reimbursable Payment: EPA is authorized to bill as costs are incurred and authorized, and should correspond to actual IPAC payment submission. The servicing agency is **limited to recovery of "actual costs"** only, with a progress report reflecting the progress to the date of the invoice. The report will note obstacles encountered, suggested solutions, progress to date, and identify costs and expenses as stipulated in the agreed upon cost budget for services rendered or supplies delivered, as stated in Section II, B. Cost Budget. Include back-up data with each request for payment. Back-up data includes all documents needed to support the requested IPAC reimbursement, such as record of contract payments, receipts, payrolls, and so on.
- \*Actual Costs = EPA staff Burden Labor (Overhead Applied) plus costs of all direct expenses without burdening. For example: housing, vehicles, consultants, sub-consultants, contractors and sub-contractors, etc (unburden).

Submit cost support documentation and Progress Report to:

Julie Morris, Finance Technician  
Western Federal Lands Highway Division  
610 East Fifth Street  
Vancouver WA 98661-3801

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D. Administrative Fee: Unless otherwise explicitly stated in this Agreement, FHWA shall not be liable for any additional administrative fees.

#### V. KEY OFFICIALS

##### **REQUESTING AGENCY – FHWA/Western Federal Lands Highway Division WFLHD**

Contact: Michael Traffalis, COR  
Voice: (360) 619-7787  
Fax: (360) 619-7845  
Email: [Michael.Traffalis@fhwa.dot.gov](mailto:Michael.Traffalis@fhwa.dot.gov)

##### **SERVICING AGENCY- Environmental Protection Agency, USEPA Coeur d'Alene Field office**

Contact: Earl Liverman, COR  
Voice: (208) 664-4858  
Fax: (208) 664-5829  
Email: [liverman.earl@epa.gov](mailto:liverman.earl@epa.gov)

#### VI. SPECIAL PROVISIONS

Any resultant contract must be issued with the Davis Bacon wage rate regulations.

#### VII. MODIFICATIONS

Any modifications to the Agreement must be made in writing and agreed to by both parties. Such authorizations are not binding unless they are in writing and signed by personnel authorized to bind each of the agencies.

#### VIII. AGREEMENT COMPLETION

When the FHWA has accepted all deliverables, EPA will provide a final Removal Action Report FHWA.

#### IX. TERMINATION

Either agency may terminate this agreement upon 30-calendar day (or as designated in the statement of work) prior written notification to the other agency. If this agreement is terminated by the Servicing Agency, its liability shall extend only to the release of its work products and related materials to the Requesting Agency by the effective date of termination. If this agreement should be terminated by the Requesting Agency, its liability shall extend only to pay for the actual and reasonable costs of the items/services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination. Otherwise, the Agreement will terminate upon the expiration date specified in Section III, Term of Agreement, unless the period of performance is extended by amendment to the agreement and as agreed by both parties.

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## X. Agreement Standard Conditions

### Financial

**1. Funding.** In no case will EPA make commitments or expenditures beyond 100% of funds obligated under this Agreement as modified.

**2. Additional funds.** FHWA and EPA shall closely monitor funds. The agencies may increase the total obligation by modifying this Agreement.

**3. Duration of the Agreement.** When Agreement performance is expected to extend beyond the funding limits of FHWA's appropriation, the Agreement may be extended provided the agencies have executed a modification using new funding.

**4. Agreement Closeout.** Upon receipt of the final accounting of project costs, FHWA will close the EPA account. The remaining balance in the Agreement account will be de-obligated by the FHWA Finance Office upon receipt of approved close-out documentation by the Contracting Officer.

### Laws

**5. Compliance with Applicable Laws.** Both parties agree to comply with authorities, laws and regulations cited in this document.

**6. 508 Compatibility.** Each Electronic & Information Technology (EIT) item/service furnished under this agreement shall comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as updated in 1998.

**7. Competition Requirements for Servicing Agency.** All acquisitions awarded by EPA in performance of this Agreement shall comply with the Competition in Contracting Act (CICA), public law 98-369.

### Administration

**8. Responsibilities.** The FHWA COR and the EPA designated official shall be responsible for technical oversight of the specified item/service, as set forth in the attached statement of work.

**9. Third Party Liability.** With respect to third-party liability for acts arising out of the performance of official duties by a government employee of EPA, EPA undertakes responsibilities for the investigation, adjudication, settlement, and payment of any claim asserted against the United States; except that, in all cases, the responsibility for the investigation, adjudication, settlement, and payment of any claim with respect to third-party liability arising out of the use, damage, or destruction of loaned personal property shall be the responsibility of the particular agency that has custody and control of the said personal property. In addition, EPA representative shall have the duty of investigating and reporting, in accordance with EPA's regulations and policies, incidents occurring on, or involving that EPA's real property, and FHWA agrees to cooperate fully in such investigations.

**10. Disputes.** Agency employees responsible for the administration of this Agreement will be the initial points of contact for any disputes arising under this Agreement. Disputes may be submitted in writing to either of these persons. Any disputes that are not resolved at this level may be referred to their respective agency's reviewing official for resolution. Pending the resolution or claim pursuant to this article, the parties agree that performance of all obligations shall be pursued diligently in accordance with terms and conditions of the Agreement.

### Other

**11. Property.** Purchase of equipment required for performance of the work must be authorized by the agreement.

**12. Travel.** All travel under this agreement shall be in accordance with the Federal Travel Regulations, unless otherwise agreed to by both agencies.